

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FISHER SAND & GRAVEL, CO., et al.,

Plaintiffs,

v.

No. 10-cv-0635 RB/SMV

FNF CONSTRUCTION, INC., et al.,

Defendants.

**ORDER FOR SUPPLEMENTAL BRIEFING ON
DEFENDANT BILLINGS' OBJECTIONS**

THIS MATTER is before the Court on Defendant Jed Billings' Objections to Order Granting in Part and Denying in Part His Motion to Compel Responses to His First Interrogatories and Second Requests for Production . . . [Doc. 477], filed on February 4, 2014. Plaintiffs will be ordered to respond within five days as ordered herein.

Defendant Billings argues that "Michael Moehn, Plaintiffs' expert as to damages, testified that his preparation of the Las Cruces Project estimate was based, at least in part, on prior estimates for three specific jobs." *Id.* at 4, *see id.* at 6. Additionally, Defendant Billings argues that a chart produced by Plaintiffs entitled "Fisher Sand & Gravel Awarded NMDOT Projects" appears to contain profit information from prior jobs performed by Plaintiffs in New Mexico, on which Plaintiffs will rely to support their damages calculations. [Doc. 477] at 4.

The Court will order Plaintiffs to respond to these assertions within five days, and Defendant Billings will have an additional five days to reply, if he so chooses. **Plaintiffs should indicate whether or not they have identified Michael Moehn as an expert. Plaintiffs should also clearly indicate whether Mr. Moehn (or any other expert identified by Plaintiffs) has**

considered the facts or data sought in Interrogatory Number 6 and/or Request for Production Number 11 in formulating the opinions to which he is expected to testify at trial.

IT IS THEREFORE ORDERED that Plaintiffs respond, as ordered herein, within five days. Defendant Billings may reply within five days of the filing of the response, if he so chooses.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge